

SENATE JOURNAL OF THE IDAHO LEGISLATURE

SECOND REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

SIXTIETH LEGISLATIVE DAY
THURSDAY, MARCH 11, 2004

Senate Chamber

President Pro Tempore Geddes called the Senate to order at 9:30 a.m.

Roll call showed all members present except Senators Burkett, Burtenshaw, Calabretta, Cameron, Hill, Keough, Lodge, Marley, McKenzie, Noble, Pearce, Richardson, Stegner, Stennett, and Williams, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Emily Infanger, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of March 10, 2004, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

Senators Burkett, Burtenshaw, McKenzie, Noble, and Stegner were recorded present at this order of business.

SCR 134

BY STATE AFFAIRS COMMITTEE A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND PROVIDING APPROVAL FOR THE DEPARTMENT OF ADMINISTRATION AND THE EASTERN IDAHO TECHNICAL COLLEGE TO ENTER INTO AN AGREEMENT WITH THE IDAHO STATE BUILDING AUTHORITY TO FINANCE AND DEVELOP A SPECIFIED FACILITY.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the First Regular Session of the Fifty-seventh Idaho Legislature passed House Concurrent Resolution No. 30 authorizing eight state bodies and community college districts, including the Eastern Idaho Technical College located in Idaho Falls, to enter into agreements with the Idaho State Building Authority to finance and develop or renovate specified facilities located throughout Idaho; and

WHEREAS, due to unresolved issues relating to U.S. Department of Commerce Economic Development Administration grant terms, the Idaho State Building Authority has been unable to issue funding to the Eastern Idaho Technical College; and

WHEREAS, the Eastern Idaho Technical College wishes to help meet the need for trained health care professionals in the Idaho Falls area and seeks to construct a new health care education building in accordance with policies of the State Board of Education; and

WHEREAS, the Legislature recognizes the significant immediate economic stimulus that would be provided by proceeding with construction on this project; and

WHEREAS, the amount of appropriated and available funds for the Eastern Idaho Technical College is not sufficient to cover the estimated design and construction costs of \$9,860,000 associated with this facility in a timely manner; and

WHEREAS, it is in the best interest of the state and the Eastern Idaho Technical College for this alternative authorization to be provided for the financing of a new facility for use by the Eastern Idaho Technical College.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-seventh Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislature hereby authorizes and provides approval for the Department of Administration and the Eastern Idaho Technical College to enter into an agreement with the Idaho State Building Authority, under such terms and conditions as may be reasonable and necessary, to provide for the financing and development of the Health Care Education Building located in Idaho Falls, Idaho.

BE IT FURTHER RESOLVED that this resolution constitutes authorization to enter into an agreement required by the provisions of Section 67-6410, Idaho Code, and with respect to the State Board of Education and State Board for Professional-Technical Education, this resolution constitutes the approval required by the provisions of Section 33-3805A, Idaho Code.

SCR 134 was introduced, read at length, and referred to the Judiciary and Rules Committee for printing.

The Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Cameron, Hill, Keough, Lodge, and Marley were recorded present at this order of business.

March 11, 2004

The JUDICIARY AND RULES Committee reports that S 1441 has been correctly printed.

DARRINGTON, Chairman

S 1441 was referred to the Commerce and Human Resources Committee.

March 10, 2004

The JUDICIARY AND RULES Committee reports that **S 1234**, as amended, **S 1240**, **S 1241**, **S 1242**, **S 1250**, **S 1251**, **S 1263**, **S 1274**, **S 1281**, **S 1291**, **S 1299**, **S 1306**, **S 1318**, and **S 1320** have been correctly enrolled.

DARRINGTON, Chairman

The President Pro Tempore signed Enrolled **S 1234**, as amended, **S 1240**, **S 1241**, **S 1242**, **S 1250**, **S 1251**, **S 1263**, **S 1274**, **S 1281**, **S 1291**, **S 1299**, **S 1306**, **S 1318**, and **S 1320** and ordered them transmitted to the House for the signature of the Speaker.

March 10, 2004

The JUDICIARY AND RULES Committee reports that Enrolled **SCR 122** and **SJM 108** were delivered to the Office of the Secretary of State at 11:12 a.m., March 10, 2004.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

March 10, 2004

The JUDICIARY AND RULES Committee reports that Enrolled **S 1278** was delivered to the Office of the Governor at 1:23 p.m., March 10, 2004.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

March 10, 2004

The FINANCE Committee reports out **H 648** with the recommendation that it do pass.

CAMERON, Chairman

H 648 was filed for second reading.

March 10, 2004

The EDUCATION Committee reports out **S 1392**, **H 596**, and **H 632** with the recommendation that they do pass.

SCHROEDER, Chairman

S 1392, **H 596**, and **H 632** were filed for second reading.

March 10, 2004

The HEALTH AND WELFARE Committee reports out **H 748**, **H 552**, as amended, and **HCR 55** with the recommendation that they do pass.

BRANDT, Chairman

H 748 and **H 552**, as amended, were filed for second reading.

HCR 55 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

March 10, 2004

The HEALTH AND WELFARE Committee reports out **H 676**, as amended, with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

BRANDT, Chairman

There being no objection, **H 676**, as amended, was referred to the Fourteenth Order of Business, General Calendar.

March 10, 2004

The HEALTH AND WELFARE Committee reports out **H 656** with the recommendation that it do pass, and with the recommendation that it be placed on the Consent Calendar.

BRANDT, Chairman

H 656 was filed for second reading.

March 10, 2004

The JUDICIARY AND RULES Committee reports out **H 531** and **H 589**, as amended, with the recommendation that they do pass.

DARRINGTON, Chairman

H 531 and **H 589**, as amended, were filed for second reading.

Senators Calabretta and Stennett were recorded present at this order of business.

March 10, 2004

The STATE AFFAIRS Committee reports out **H 539** with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

SORENSEN, Chairman

There being no objection, **H 539** was referred to the Fourteenth Order of Business, General Calendar.

March 10, 2004

The STATE AFFAIRS Committee reports out **H 712**, **HCR 44**, **H 532**, **H 625**, as amended, **H 691**, and **H 692** with the recommendation that they do pass.

SORENSEN, Chairman

H 712, H 532, H 625, as amended, **H 691**, and **H 692** were filed for second reading.

HCR 44 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

March 11, 2004

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 756** with the recommendation that it do pass.

BUNDERSON, Chairman

H 756 was filed for second reading.

March 11, 2004

The LOCAL GOVERNMENT AND TAXATION Committee reports out **H 651**, as amended, with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

BUNDERSON, Chairman

There being no objection, **H 651**, as amended, was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

Senators Pearce and Richardson were recorded present at this order of business.

March 10, 2004

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to advise you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1227, S 1228, S 1252, S 1277, S 1365, S 1377

Sincerely,
/s/ Dirk Kempthorne
Governor

The correspondence was ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

March 10, 2004

Mr. President:

I transmit herewith **H 818, H 819, H 820, H 821**, and **H 751**, as amended, which have passed the House.

JUKER, Chief Clerk

H 818, H 819, H 820, H 821, and **H 751**, as amended, were filed for first reading.

March 10, 2004

Mr. President:

I return herewith **S 1408, S 1409, S 1410, S 1411, S 1412, S 1413, S 1414, S 1224, S 1243**, as amended, **S 1303, S 1304, S 1331**, and **S 1344** which have passed the House.

JUKER, Chief Clerk

S 1408, S 1409, S 1410, S 1411, S 1412, S 1413, S 1414, S 1224, S 1243, as amended, **S 1303, S 1304, S 1331**, and **S 1344** were referred to the Judiciary and Rules Committee for enrolling.

March 10, 2004

Mr. President:

I transmit herewith Enrolled **HCR 51** and **HCR 47** for the signature of the President.

JUKER, Chief Clerk

The President Pro Tempore signed Enrolled **HCR 51** and **HCR 47** and ordered them returned to the House.

March 10, 2004

Mr. President:

I return herewith Enrolled **S 1381, S 1385, S 1386, S 1387, S 1396, S 1397, S 1398, S 1399, S 1400, S 1401, S 1402, S 1403, S 1404**, and **S 1405** which have been signed by the Speaker.

JUKER, Chief Clerk

Enrolled **S 1381, S 1385, S 1386, S 1387, S 1396, S 1397, S 1398, S 1399, S 1400, S 1401, S 1402, S 1403, S 1404**, and **S 1405** were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

The President Pro Tempore announced that **HCR 49** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Brandt, seconded by Senator Burkett, **HCR 49** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

The President Pro Tempore announced that **HCR 46** was before the Senate for final consideration, the question being, "Shall the resolution be adopted?"

On motion by Senator Goedde, seconded by Senator Burkett, **HCR 46** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

On request by Senator Stegner, granted by unanimous consent, **HJM 18** retained its place on the calendar for one legislative day.

The Senate advanced to the Eleventh Order of Business.

Introduction, First Reading and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1442

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE LEGISLATURE RATIFYING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; AMENDING CHAPTER 5, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-515, IDAHO CODE, TO PROVIDE A PROCEDURE FOR THE LEGISLATURE TO RATIFY A PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

S 1443

BY FINANCE COMMITTEE

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING SECTION 33-1006, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY AND TO PROVIDE TRANSPORTATION REIMBURSEMENT FOR PUBLIC VIRTUAL SCHOOLS; AMENDING CHAPTER 52, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-5202A, IDAHO CODE, TO DEFINE TERMS; AMENDING SECTION 33-5208, IDAHO CODE, TO CLARIFY COMPUTATION OF SUPPORT UNITS FOR CHARTER SCHOOLS FORMED BY CONVERSION OF AN EXISTING TRADITIONAL PUBLIC SCHOOL, TO PROVIDE FUNDING FOR PUBLIC VIRTUAL SCHOOLS AND TO PROVIDE PROPER TERMINOLOGY; AND DECLARING AN EMERGENCY.

S 1442 and **S 1443** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

H 818, **H 819**, **H 820**, and **H 821**, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 751, as amended, by State Affairs Committee, was introduced, read the first time at length, and referred to the Judiciary and Rules Committee.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

H 805, by Appropriations Committee, was read the second time at length and filed for third reading.

S 1290, by Health and Welfare Committee, was read the second time at length and filed for third reading.

H 579, as amended, by Health and Welfare Committee, was read the second time at length and filed for third reading, Consent Calendar.

H 620, by Business Committee, was read the second time at length and filed for third reading.

H 512, as amended, by Revenue and Taxation Committee, was read the second time at length and filed for third reading.

H 638, by Commerce and Human Resources Committee, was read the second time at length and filed for third reading.

S 1435, by Judiciary and Rules Committee, was read the second time at length and filed for third reading.

H 726, as amended, by State Affairs Committee, was read the second time at length and filed for third reading.

H 499, as amended, by Business Committee, was read the second time at length and filed for third reading.

H 671, **H 526**, **H 527**, and **H 529**, by Business Committee, were read the second time at length and filed for third reading.

H 678, by Agricultural Affairs Committee, was read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Compton, granted by unanimous consent, **S 1284**, as amended, having been held, was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Schroeder, granted by unanimous consent, **S 1310**, as amended, having been held, **S 1328**, as amended, having been held, and **S 1327**, as amended, retained their place on the Third Reading Calendar for one legislative day.

S 1353 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Marley arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 34.

NAYS--None.

Absent and excused--Williams. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **S 1353** passed, title was approved, and the bill ordered transmitted to the House.

S 1416 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Lodge arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 34.

NAYS--None.

Absent and excused--Williams. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **S 1416** passed, title was approved, and the bill ordered transmitted to the House.

S 1440 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Davis arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 34.

NAYS--None.

Absent and excused--Williams. Total - 1.

Total - 35.

Whereupon the President Pro Tempore declared **S 1440** passed, title was approved, and the bill ordered transmitted to the House.

The President Pro Tempore called Senator Hill to the Chair.

S 1437 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Bunderson and Acting Senator Andreason arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 34.

NAYS--None.

Absent and excused--Williams. Total - 1.

Total - 35.

Whereupon the Acting President declared **S 1437** passed, title was approved, and the bill ordered transmitted to the House.

S 1287, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator McWilliams arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Werk. Total - 32.

NAYS--Sweet. Total - 1.

Absent and excused--Geddes, Williams. Total - 2.

Total - 35.

Whereupon the Acting President declared **S 1287**, as amended, passed, title was approved, and the bill ordered transmitted to the House.

S 1271, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Stegner arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Bailey, Brandt, Burkett, Calabretta, Compton, Davis, Gannon, Geddes, Hill, Ingram, McWilliams, Noble, Richardson, Schroeder, Stegner. Total - 15.

NAYS--Andreason (Andreason), Bunderson, Burtenshaw, Cameron, Darrington, Goedde, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, Noh, Pearce, Sorensen, Stennett, Sweet, Werk, Williams. Total - 20.

Total - 35.

Whereupon the Acting President declared that **S 1271**, as amended, had failed to pass the Senate and ordered the bill filed in the office of the Secretary of the Senate.

S 1301, as amended, was read the third time at length, section by section, and placed before the Senate for final consideration. Senators Compton arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason (Andreason), Bailey, Brandt, Bunderson, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 33.

NAYS--Burkett. Total - 1.

Absent and excused--Geddes. Total - 1.

Total - 35.

Whereupon the Acting President declared **S 1301**, as amended, passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate recessed at 12:10 p.m. until the hour of 4 p.m. of this day.

RECESS AFTERNOON SESSION

The Senate reconvened at 4 p.m., pursuant to recess, President Pro Tempore Geddes presiding.

Roll call showed all members present except Senator Calabretta, absent and formally excused by the Chair; and Senators Bunderson, Keough, Malepeai, Pearce, and Sorensen, absent and excused.

Prior to recess the Senate was at the Sixth Order of Business, Reports of Standing Committees.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

Senators Bunderson, Keough, Malepeai, Pearce, and Sorensen were recorded present at this order of business.

The President Pro Tempore declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President Pro Tempore called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **H 682** without recommendation and without amendment; and **S 1351, S 1314, S 1346, H 693, H 635, S 1393, S 1422, H 586, and H 651**, as amended, without recommendation, amended as follows:

SENATE AMENDMENT TO S 1351

AMENDMENTS TO SECTION 1

On page 1 of the printed bill, in line 11, following "PLACE" insert: "REASONABLE"; in line 13, following "place" insert: "reasonable"; and in line 40, following "felony" insert: ", the commission of which renders the certificated person unfit to teach or otherwise perform the duties of the certificated person's position".

CORRECTIONS TO TITLE

On page 1, in line 3, following "THAT" insert: "REASONABLE"; and in line 4, following "PLACING" insert: "REASONABLE".

SENATE AMENDMENTS TO S 1314

AMENDMENT TO SECTION 2

On page 8 of the printed bill, delete lines 44 through 49 and insert:

"(y) A person who has performed or provided bull semen evaluations in this state prior to the date of adjournment of the second regular session of the fifty-seventh Idaho legislature from continuing thereafter to perform or provide bull semen evaluations. For purposes of this exception, bull semen evaluations are limited to the collecting and analyzing of bovine semen for the purpose of assessing concentration, motility, morphology, and gross scrotal circumference."

AMENDMENTS TO THE BILL

On page 1, delete lines 8 through 43, delete pages 2 through 5, and on page 6, delete lines 1 through 18; and in line 19, delete "SECTION 2" and insert: "SECTION 1".

CORRECTIONS TO TITLE

On page 1, delete line 2 and insert: "RELATING TO VETERINARIANS;"; in line 3, delete "DEFINITION; AND";

and also in line 3, following "THAT" insert: "CERTAIN"; and in line 4, delete "CONDUCTING CERTAIN" and insert: "PERFORMING OR PROVIDING SPECIFIED".

SENATE AMENDMENT TO S1346

AMENDMENT TO SECTION 1

On page 1 of the printed bill, in line 20, delete "areas." and insert: "area. For the purposes of this section, if services are available to students throughout the state, the state of Idaho is considered a compact and contiguous area.".

SENATE AMENDMENT TO H 693

AMENDMENT TO SECTION 1

On page 1 of the printed bill, in line 23, delete "the organs.".

AMENDMENT TO SECTION 2

On page 2, in line 21, delete "organs.".

CORRECTION TO TITLE

On page 1, in line 4, delete "THE ORGANS,"; and in line 7, delete "ORGANS,".

SENATE AMENDMENT TO H 635

AMENDMENTS TO THE BILL

On page 2 of the printed bill, following line 52, insert: "SECTION 2. That Section 42-1712, Idaho Code, be, and the same is hereby amended to read as follows:

42-1712. CONSTRUCTION, ENLARGEMENT, ALTERATION OR REPAIR OF DAMS -- SUBMISSION OF DUPLICATE PLANS, DRAWINGS AND SPECIFICATIONS. Owners who shall desire to construct, or enlarge, or alter or repair, meaning only such alterations or repairs as may affect the safety of the dam or reservoir, any dam, for the purpose of storing or appropriating or diverting any of the waters of this state, when the same is to be more than twenty (20) feet in height or to have a storage capacity of one hundred (100) acre-feet or more, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the director, and construction of a new dam or enlargement, or alteration or repairs shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications.

Owners of dams under construction on the effective date of this legislation and for which plans, drawings and specifications are required but have not been approved on or before the effective date of this legislation shall submit such plans, drawings and specifications for approval, with the fee established hereinafter. The director shall give notice to owners to submit plans, drawings and specifications, and failure to submit plans, drawings and specifications for approval within thirty (30) days of the date of mailing the notice shall be punishable as provided in this act, and construction shall be stopped upon issuance of an order by the director unless for good cause shown as determined by the director ~~unless~~ further time is allowed. The notice and/or order provided for in this paragraph may be given by certified mail and a return receipt signed by the owner or responsible company shall constitute prima facie evidence of service.

Upon receipt of the plans, drawings and specifications, the director shall give consideration thereto and shall approve or

disapprove the same within the time provided in this section, and if he approves them, the director shall affix his approval thereto and return one (1) copy of each such plans, drawings and specifications, with his approval, to the party or parties proposing to construct the works.

Plans, drawings and specifications submitted to the director complete with fees shall be approved or disapproved in no more than sixty (60) days and in no less than fourteen (14) days after receipt. Defective plans, drawings and specifications made in a bona fide attempt to conform to the law and rules ~~and regulations~~ of the water resource board shall not be rejected but notice of defect shall be sent to the owner by certified mail. If within thirty (30) days of the date of mailing the notice the owner does not file amended and perfected plans, drawings and specifications, the plans, drawings and specifications shall be rejected and canceled unless for good cause shown the director allows the owner further time.

The construction of all dams under plans, drawings and specifications approved by the director shall be pursued with reasonable diligence to completion. In the event that an owner fails to commence actual construction and maintain reasonable construction progress of the dam under the plans, drawings and specifications approved by the director prior to or after the effective date of this act, such approval may be voided by the director one (1) year after such approval. Notice of the intent to void any such approval shall be sent by the director to the owner by certified mail and said owner shall be allowed thirty (30) days within which to show cause why such approval should not be voided. The director may grant additional time within which to commence the construction under plans, drawings and specifications approved by the director upon a showing of reasonable cause. Plans, drawings and specifications for which approval has become void must be resubmitted for approval, with the fee therefor as hereafter provided, prior to commencing construction of any such dam.

The plans, drawings and specifications shall include the following information:

- (a) The name and address of the owner.
- (b) The location, type, size and height of the proposed dam or reservoir and appurtenant works.
- (c) The storage capacity of the reservoir.
- (d) Such other pertinent information as the director may require including the following:
 - (1) Data concerning subsoil and foundation conditions and materials entering into construction of the dam or reservoir.
 - (2) Investigations of, and reports on subsurface conditions involving such matters as exploratory pits, trenches, and adits, drilling, coring, geophysical surveys, tests to determine leakage rates, and physical tests to measure in place the properties and behavior of foundation materials at the dam or reservoir site.
 - (3) Investigation of and reports on the geology of the dam or reservoir site and its vicinity, possible geological hazards, availability and quality of construction materials, and other pertinent factors.

The plans, drawings and specifications shall be of such character and size setting forth such pertinent details and dimensions and in such form as the director requires. Plans, drawings and specifications which are submitted to the department shall be prepared by or under the direction of a registered professional engineer who is registered pursuant to Idaho law and authenticated by him as provided in section 54-1215, Idaho Code,

or by such other person as provided in section 54-1223, Idaho Code.

Where said dam is, in the opinion of the director, not of sufficient importance to have the provisions of the section apply to such dam, then the director shall have power, upon written application, to suspend the provisions of this section in regard to such dam.

The director shall prepare design and construction criteria for dams and barriers not requiring departmental approval of plans, drawings and specifications and shall supply such criteria upon request to any interested person to aid in constructing such dams and barriers. The use of such criteria shall in no way relieve the owner of responsibility for adequacy of design and construction procedures, nor be the basis of liability for any city or county that grants a permit related to construction of the dam or barrier pursuant to the provisions of chapter 65, title 67, Idaho Code."; and renumber the subsequent section of the bill accordingly.

CORRECTION TO TITLE

On page 1, in line 4, following "RESOURCES;" insert: "AMENDING SECTION 42-1712, IDAHO CODE, TO INCLUDE A REFERENCE TO CRITERIA FOR BARRIERS, TO REGULATE LIABILITY WHEN RELYING UPON CRITERIA AND TO MAKE TECHNICAL CORRECTIONS;"

SENATE AMENDMENT TO S 1393

AMENDMENTS TO THE BILL

On page 4 of the printed bill, following line 45, insert:

"SECTION 2. That Section 20-245, Idaho Code, be, and the same is hereby amended to read as follows:

20-245. ~~CONVICT LABOR ON STATE PROJECTS WITHIN OR OUTSIDE OF PENITENTIARY--SALE OF PRODUCTS OFFENDER LABOR ON STATE AND COMMUNITY SERVICE PROJECTS.~~

(1) Offender labor on state projects. The state board of correction shall have the authority to use, under such rules ~~and regulations~~ as they may prescribe, the labor of ~~convicts~~ offenders either within or without the walls of the penitentiary and on all public works done under the direct control of the state; that ~~convict~~ offender labor under control of the state board of correction shall manufacture and repair state highway signs, except for highways and projects where ~~F~~federal regulations would prohibit the use of signs so manufactured; provided, that so far as practicable any manufacture conducted within the walls shall be in connection with metal motor license plates, road or street signs furnished by the state or used by its municipalities, wearing apparel, articles; and containers, for state use in the various departments or institutions of the state not for sale upon the open market. When any product produced by the ~~convict~~ offender shall be used by any department or other institution of the state, the current appropriation shall receive from such department or institution such reimbursement therefor as may be fixed by the state board of correction with the approval of the state board of examiners.

(2) Offender labor on community service projects. The state board of correction shall have the authority to assign parolees under department of correction supervision, probationers under court order or department of correction supervision and offender residents of community work centers under the direction or order of the board of correction, as community service workers as set

forth in section 72-102(5), Idaho Code. The state board of correction shall have the authority to charge offenders performing community service work an hourly fee in an amount to be determined by the state insurance fund, to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for parolees, probationers or community work center residents assigned as community service workers."; and also on page 4, in line 46, delete "SECTION 2" and insert: "SECTION 3".

CORRECTIONS TO TITLE

On page 1, in line 2, delete "THE WORKER'S COMPENSATION LAW" and insert: "COMMUNITY SERVICE WORK"; and in line 3, delete "AND DECLAR-" and insert: "AMENDING SECTION 20-245, IDAHO CODE, TO REVISE DESCRIPTIVE LANGUAGE, TO SET FORTH PROVISIONS APPLICABLE TO OFFENDER LABOR ON COMMUNITY SERVICE PROJECTS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CHANGES; AND DECLAR-".

SENATE AMENDMENT TO S 1422

AMENDMENTS TO SECTION 1

On page 1 of the printed bill, delete lines 19, 20 and 21 and insert: "of Idaho declares that authorities shall be required to pay no taxes"; in line 26, delete "any"; in line 27, delete "fuels utilized by them" and insert: "special fuels used in motor vehicles owned or leased and operated by authorities"; in line 30, delete "and" and insert: "and"; in line 32, following "Code" insert: "and shall be entitled to such credits and refunds as other political subdivisions of the state of Idaho are entitled under section 63-2423, Idaho Code"; and in line 35, following "approval" insert: ", and retroactively to July 1, 2002".

CORRECTION TO TITLE

On page 1, in line 3, delete "EXEMPTION FROM TAXATION COMMENCES"; and delete lines 4 through 7 and insert: "AUTHORITIES ARE EXEMPT FROM TAXATION ON SPECIAL FUELS USED IN MOTOR VEHICLES OWNED OR LEASED AND OPERATED BY AUTHORITIES AND TO PROVIDE THAT AUTHORITIES SHALL BE ENTITLED TO CREDITS AND REFUNDS AS PROVIDED IN FUELS TAX LAW FOR POLITICAL SUBDIVISIONS OF THE STATE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION."

SENATE AMENDMENT TO H 586

AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete lines 14 through 43; and delete page 2 and insert:

"18-1359. USING PUBLIC POSITION FOR PERSONAL GAIN. (1) No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of

undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.

(2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(5) (a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

(b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

(6) The prohibitions contained within this section shall not include conduct defined by the provisions of section 59-703(4), Idaho Code.

(7) The prohibitions within this section and section 18-1356, Idaho Code, as it applies to part-time public servants, ~~does~~ do not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and ~~does~~ do not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction."

CORRECTION TO TITLE

On page 1, delete lines 3 through 10 and insert: "IDAHO CODE, TO ALLOW MERIT INCREASES OR PROMOTIONS TO AN EMPLOYEE OF A GOVERNMENTAL ENTITY HOLDING A POSITION PRIOR TO THE ELECTION OF A LOCAL GOVERNMENT OFFICIAL WHO IS RELATED WITHIN THE SECOND DEGREE AND TO MAKE TECHNICAL CORRECTIONS."

SENATE AMENDMENT TO H 651, As Amended AMENDMENT TO SECTION 1

On page 1 of the engrossed bill, in line 37, delete "twelve dollars and fifty cents (\$12.50)" and insert: "fifteen dollars and fifty cents (\$15.50)".

CORRECTION TO TITLE

On page 1, in line 4, delete "TWELVE" and insert: "FIFTEEN".

The Committee also has **S 1233**, **S 1286**, **S 1375**, **H 528**, **H 676**, as amended, **H 539** and **S 1284**, as amended, under consideration, reports progress, and begs leave to sit again

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Marley, the report was adopted by voice vote.

S 1351, as amended, **S 1314**, as amended, **S 1346**, as amended, **S 1393**, as amended, **S 1422**, as amended, were referred to the Judiciary and Rules Committee for engrossing and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

H 693, as amended in the Senate, **H 635**, as amended in the Senate, **H 586**, as amended in the Senate, **H 651**, as amended, as amended in the Senate, were filed for first reading as amended and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

H 682 was filed for second reading.

On request by Senator Davis, granted by unanimous consent, all Senate bills were placed at the head of the Third Reading Calendar, followed by House bills amended in the Senate, followed by House bills.

The Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 5:30 p.m. until the hour of 9:30 a.m., Friday, March 12, 2004.

ROBERT L. GEDDES, President Pro Tempore

Attest: JEANNINE WOOD, Secretary